

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of Iowa Code section 809A.25, the Attorney General hereby amends Chapter 33, “Forfeited Property,” Iowa Administrative Code.

Forfeited property may be used by the Attorney General (the Department of Justice or “the Department”) in the enforcement of the criminal law. The Department may give forfeited property to any other law enforcement agency within the state if, in the opinion of the Attorney General and pursuant to Iowa Code section 809A.17, it will enhance law enforcement within the state.

These amendments increase the amount of forfeited funds retained by the Department from 10 percent to 20 percent and decrease the amount of forfeited funds given to local law enforcement agencies from 90 percent to 80 percent. The amendments also increase the fee charged by the Department for transfer of title of forfeited vehicles from \$100 to \$200. In addition, the amendments set at 20 percent the amount of proceeds from the sale of forfeited real estate retained by the Department.

The increased revenue to the Department will help the Department to execute its duty to enforce criminal law in the state of Iowa through its Criminal Appeals Division, its Area Prosecutions Division, and its Prosecuting Attorneys Training Coordinator.

The amendments also impose a requirement on law enforcement agencies to notify the Department whenever they seize property for forfeiture. A copy of the itemization provided to the county attorney in order for the county attorney to commence forfeiture proceedings is sufficient for this purpose. This change is intended to facilitate effective oversight of forfeiture proceedings throughout the state and to enable the Department to monitor the handling of these public funds.

The rules are not subject to waiver. The reporting requirement is not onerous; seeking a waiver would require more effort on the part of the local agency than complying with the rule. As to the amount remitted to the local agency, the 80 percent proposed by this rule making puts the state of Iowa in line with the United States Department of Justice’s practice of returning 80 percent of federal forfeiture proceeds to local seizing law enforcement agencies.

A public hearing was held on December 8, 2009. Representatives of local law enforcement agencies stated that a successful forfeiture requires a large investment in both time and money, and reducing the amount returned to the local jurisdiction would result in fewer forfeitures. The local law enforcement representatives asserted that these amendments shift the budget shortfall to local government. While the funds in question are important to the enhancement of local law enforcement efforts, they are equally crucial to the ongoing operation of the Department’s criminal law enforcement responsibilities. The reduced gift to local agencies of 80 percent remains generous and places the state of Iowa’s policy at the same level as the federal policy. The federal forfeiture program, at 80 percent, provides significant incentive for forfeitures by both state and local law enforcement agencies throughout the nation, including agencies within the state of Iowa.

These amendments are identical to those published under Notice of Intended Action in the Iowa Administrative Bulletin on November 4, 2009, as **ARC 8257B**.

These amendments are intended to implement Iowa Code chapter 809A.

These amendments will become effective February 17, 2010.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [33.3 to 33.5] is being omitted. These amendments are identical to those published under Notice as **ARC 8257B**, IAB 11/4/09.

[Filed 12/22/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]